



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
 ) ISCR Case No. 09-01048  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

August 22, 2011

**Decision**

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DUFFY, James F., Administrative Judge:

Applicant has mitigated the Guideline F (Financial Considerations) security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 24, 2010, and requested a hearing. The case was assigned to me on June 6, 2011. DOHA issued a notice of hearing on June 21, 2011, and the hearing was convened as scheduled on July 13, 2010. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence

without objection. Applicant testified, called one witness, and submitted exhibits (AE) A through G, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 20, 2011.

### **Findings of Fact**

Applicant is a 27-year-old security officer who works for a defense contractor. She has worked for her current employer for about three years. She graduated from high school in June 2001 and attended two years of college. She is married and has one child who is four years old. This is the first time that she has applied for a security clearance.<sup>1</sup>

The SOR alleges 27 delinquent debts totaling about \$41,532. The debts were listed on credit reports obtained on May 1, 2009; October 19, 2010; and May 26, 2010. In her answer, Applicant admitted each of the alleged debts. Her admissions are incorporated herein as findings of fact.<sup>2</sup>

Twenty-one of the alleged debts are medical debts totaling \$31,524. The remaining debts include two student loans totaling \$6,478 and four consumer debts totaling \$3,530. Applicant primarily attributes her financial difficulties to medical problems that arose while she was pregnant in 2007. Due to her medical problems, she was placed in an unpaid leave status at work from January 2007 to July 2008. Initially, she did not have medical insurance to cover her medical expenses. During her pregnancy, she met with a social worker, applied for, and obtained Medicaid coverage for a period of time. Medicaid covered certain pre-delivery and delivery medical bills and a gallbladder operation. SOR ¶ 1.d is a \$12,855 medical debt that arose from an eight-day period of hospitalization. She incurred that debt before she applied for Medicaid. She also testified that Medicaid covered none of the alleged medical debts and acknowledged she was financially responsible for them. She indicated that she was unaware of most of the medical debts until she applied for her security clearance. One of the consumer debts resulted from Applicant buying an item for her father with the understanding that he would make the installment payments, but he failed to do so.<sup>3</sup>

In the SOR, there are two sets of duplicate debts. First, the debt alleged in SOR ¶ 1.b (medical account # 2939400 in the amount of \$481) is a duplicate of the debt in SOR ¶ 1.p (medical account # 2939400 in the amount \$691). Second, the debt alleged in SOR ¶ 1.f (medical account #1083102172 in the amount \$2,207) is a duplicate of the debt in SOR ¶ 1.q (medical account #1083102172 in the amount \$2,867).<sup>4</sup>

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<sup>1</sup> Tr. at 29-31; GE 1.

<sup>2</sup> GE 1-7.

<sup>3</sup> Tr. at 33-38, 45, 48-59, 68-70; GE 3. Applicant's child was born in August 2007. See AE G.

<sup>4</sup> Tr. at 42-45; SOR.

After returning to work, Applicant paid SOR ¶¶ 1.o and 1.aa, the two student loans. In about June 2009, she established a debt management program (DMP) with a financial management agency. The alleged debts in SOR ¶¶ 1.b/1.p (medical debt \$691), 1.f/1.q (medical debt of \$2,867), 1.n (collection account of \$1,111), 1.y (collection account of \$1,249), and 1.z (collection account of \$677) are included in the DMP. Under the DMP, Applicant makes monthly payments of \$222 to the financial management agency that, in turn, disburses that money to creditors registered in that program. One debt not listed in that SOR is included the DMP. The terms of the DMP provide that Applicant remains solely responsibility for the payment of unregistered debts.<sup>5</sup>

In attempting to resolve her debts, Applicant obtained financial counseling from her bank and the financial management agency. At the hearing, she was honest and forthcoming about her delinquent debts and has accepted responsibility for them. She intends to pay off her remaining delinquent debts. Once she pays the debts listed in the DMP, she will add more delinquent debts to that program. She estimated the delinquent debts will be resolved within five years.<sup>6</sup>

Applicant is meeting all of her current financial obligations. Her monthly income is about \$1,500 and her monthly expenses are about \$1,387, including the DMP payment. Her husband was unemployed for about a year, but recently started working again. While unemployed, he collected unemployment compensation that he used towards paying their rent. The amount of his current monthly income is unknown. She and her husband have about \$3,600 in savings. At the time of the hearing, her child was covered by health insurance, but she and her husband still were not covered. They do not qualify currently for Medicaid and her company's health insurance program is too expensive. Her husband will become eligible for health insurance with his company in about three months, and she expects to be covered by his insurance.<sup>7</sup>

Applicant's second-level supervisor, who served 27 years in law enforcement positions, testified that Applicant is extremely dependable. He indicated that, as a general rule, employees who lose their security clearances are removed from the worksite immediately. However, "[s]enior management [of the defense contractor] determined that [Applicant] has done such a quality job and that her work performance is above reproach that they have allowed her to remain on site. . . which speaks volumes. . . ." He knew of no other employee in that situation who was allowed to remain on site. He stated that "all employees should be like her and I don't say that lightly."<sup>8</sup>

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<sup>5</sup> Tr. at 33-38, 59-61, 68-69, 71-76; GE 2, 7; AE F.

<sup>6</sup> Tr. at 38, 42, 59-60, 74-76, 82.

<sup>7</sup> Tr. at 38-40, 61-67; AE D, E. Applicant's income tax refunds were withheld to repay, at least in part, her student loans. See GE 3.

<sup>8</sup> Tr. at 38-40.

A plant protection manager described Applicant's work ethic and performance as "no less than exceptional." The manager also indicated she is a hard-working security officer who takes her work very seriously. He considers her a great asset to the company.<sup>9</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

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<sup>9</sup> Tr. at 36-38; AE A, B, C.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts that she was unable or unwilling to satisfy for a period of years. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

As a result of medical complications arising from a pregnancy, Applicant was placed in an unpaid leave status by her employer from January 2007 to July 2008. She did not have medical insurance to cover a number of medical expenses incurred during that pregnancy, including an eight-day period of hospitalization. She eventually obtained Medicaid coverage that paid for various medical expenses for a period of time. Her husband was also recently unemployed for about a year. Appellant's medical problems, her period of unpaid leave, and her husband's period of unemployment were conditions beyond her control that severely impacted her financial situation. She returned to work in July 2008. Since then, she obtained financial counseling and paid her two student loans totaling \$6,478. In about June 2009, she established a DMP and pays \$222 per month into that program. Six delinquent debts, including four of the five consumer debts, are being addressed in the DMP. Given her current financial situation, she is applying a reasonable amount of her income towards the delinquent debts. She intends to satisfy all of her delinquent debts. Once she satisfies the debts registered in the DMP, she will add other delinquent debts to that program. Currently, she is meeting her current financial obligations and expects to obtain medical insurance coverage soon. Her financial problems are being resolved in a prudent manner and are unlikely to recur. She has acted responsibly in addressing her financial difficulties. I find that AG ¶¶ 20(b) and 20(c) apply and AG ¶¶ 20(a) and 20(d) partially apply.

A review of the SOR revealed that two sets of the alleged debts are duplicates. Specifically, SOR ¶¶ 1.b and 1.p are duplicates as are 1.f and 1.q. Even though Applicant admitted each of the alleged debts, I find that she has a legitimate basis for disputing SOR ¶¶ 1.b and 1.f and that AG ¶ 20(e) applies to those two duplicate allegations.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of

rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant's service to her employer has been exceptional. As a general rule, her employer immediately removes employees who lose their security clearances from the worksite. Because of her dependability, work ethic, and performance, Applicant's employer has made an exception for her. After her interim security clearance was withdrawn, her employer placed her in a security officer position in which she did not need a security clearance. This action highlights the level of trust and confidence her employer has in her.

Overall, the record evidence leaves me with no questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.aa: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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James F. Duffy  
Administrative Judge